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November 16, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Via Electronic Filing

Re: MB Docket 09-182, 2010 Quadrennial Review –Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; MB Docket 07-294, Promoting Diversification of Ownership in the Broadcasting Services

Dear Ms. Dortch:

Pursuant to section 1.1206(b) of the Commission’s rules, Free Press submits this notice regarding an *ex parte* communication in the above referenced proceedings.

On November 14, 2012, Matt Wood and Lauren Wilson of Free Press; Angela Campbell of the Institute for Public Representation (“IPR”); and Cheryl Leanza, representing the United Church of Christ, Office of Communication Inc. met with Elizabeth Andrión of Chairman Genachowski’s office. The subject of the meeting was the Commission’s Quadrennial Media Ownership Review and the continuing need to assess broadcast ownership levels among women and people of color carefully and thoughtfully before releasing a final order.

We began by stressing that the Commission must act on a basis of a record containing comprehensive data about broadcast ownership. One of the bases that the Third Circuit Court of Appeals cited for reversing the Commission’s last quadrennial review order was the agency’s failure to consider the impact of that action on ownership by women and people of color. The second basis for reversal was that the Commission did not afford the public a meaningful opportunity to comment on material that was placed in the record at the last minute.¹ Thus, we urged the Commission not to act without first fully considering how any rule changes might

¹ *Prometheus Radio Project v. FCC*, 652 F.3d 431, 472 (3d Cir. 2011) (“*Prometheus IP*”) (“As ownership diversity is an important aspect of the overall media ownership regulatory framework, we re-emphasize that the actions required on remand should be completed within the course of the Commission’s 2010 Quadrennial Review of its media ownership rules.” (internal citation omitted)); see *Prometheus Radio Project v. FCC*, 373 F.3d 372, 420-21 (3d Cir. 2004) (“By failing to mention anything about the effect this change would have on potential minority station owners, the Commission has not provided a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.” (internal citation omitted)).

impact diverse ownership, or without giving the public an opportunity to comment on its Report on Ownership of Commercial Broadcast Stations released on November 14, 2012.²

We next discussed “eligible entities” to be exempted from the Commission’s transfer rule. In *Prometheus II*, the Third Circuit concluded that the 2008 Diversity Order³ provided an eligible entity definition that was arbitrary and capricious.⁴ Still, even if the Commission were to formulate a workable definition of “eligible entity,” it could not abandon its separate responsibility to assess the impact of rule changes on minority and female ownership. The Third Circuit cited both the lack of such an assessment *and* an arbitrary and capricious eligible entity definition as reasons for vacating relevant sections of the 2006 Order. Therefore, the “eligible entity” definition was just one of the reversible failures. The Court said, “Despite our prior remand requiring the Commission to consider the effect of its rules on minority and female ownership, and anticipating a workable SDB definition well before this rulemaking was completed, the Commission has in large part punted yet again on this important issue.”⁵ Therefore, the Commission still had work to do in *both* areas. A consideration of the effect of rule changes on minority and female ownership and a workable eligible entity definition are both required to fulfill the mandate of the Third Circuit, not just the latter.

Finally, we reiterated our opposition to the Commission’s proposal to relax its longstanding newspaper-broadcast cross ownership rule (NBCO). The NBCO rule remains necessary to promote access to independent and diverse local news sources. Cross-ownership of local daily newspaper and television stations leads to a curtailment of local news at the market level and does not increase news production at the station level.⁶ Moreover, over-leveraged debt resulting from consolidation has put otherwise profitable newspapers in a precarious financial situation. To service their debt, these companies have cut jobs and reporting. Still, the short term cost savings generated by these alleged “efficiencies” have only been used to temporarily enhance profits, not to generate more or better local news coverage.⁷

In accordance with the Commission’s rules, this *ex parte* notice is being filed electronically in the above referenced docket. If you have any questions regarding this filing, please do not hesitate to contact me.

² 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket Nos. 07-294 and 09-182, Report on Ownership of Commercial Broadcast Stations (2012).

³ See *Promoting Diversification of Ownership in the Broadcasting Services, 2006 Quadrennial Regulatory Review — Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 5922 (Dec. 18, 2007).

⁴ *Prometheus II* at 470. The Court offered three reasons for its finding: 1) The Commission did not explain how the definition would increase broadcast ownership by minorities and women; 2) it was unclear how measures using the definition would achieve the Commission’s stated goal; and 3) The Commission referenced no data on television ownership by minorities and women.

⁵ *Prometheus II* at 472.

⁶ See Comments of Free Press, MB Dockets 09-182, 07-294 (filed Mar. 5, 2012), at section II(A).

⁷ *Id.*

Respectfully submitted,

_____/s/____

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cc: Elizabeth Andrion